

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 DEMARIO EDWARD REED,

Case No.: 2:24-cv-01161-APG-DJA

4 Plaintiff

**Order**

5 v.

6 RIVAS, et al.,

7 Defendants

8

9 Plaintiff Demario Edward Reed brings this civil-rights action under 42 U.S.C. § 1983 to  
 10 redress constitutional violations that he claims he suffered while incarcerated at High Desert  
 11 State Prison. ECF No. 1-1. On July 15, 2024, the Magistrate Judge ordered Reed to file an  
 12 application to proceed *in forma pauperis*, or pay the \$405 filing fee, by September 15, 2024.  
 13 ECF No. 3. That deadline expired and Reed did not file an application to proceed *in forma*  
 14 *pauperis*, pay the \$405 filing fee, move for an extension, or otherwise respond.

15 **I. Discussion**

16 District courts have the inherent power to control their dockets and “[i]n the exercise of  
 17 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.  
 18 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may  
 19 dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See*  
 20 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply  
 21 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*  
 22 *Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court  
 23 order). In determining whether to dismiss an action on one of these grounds, I must consider: (1)  
 the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of  
2 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*  
3 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*  
4 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

5       The first two factors, the public’s interest in expeditiously resolving this litigation and the  
6 court’s interest in managing its docket, weigh in favor of dismissal of Reed’s claims. The third  
7 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption  
8 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the  
9 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The  
10 fourth factor—the public policy favoring disposition of cases on their merits—is greatly  
11 outweighed by the factors favoring dismissal.

12       The fifth factor requires me to consider whether less drastic alternatives can be used to  
13 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*  
14 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic  
15 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*  
16 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive  
17 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives  
18 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial  
19 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have  
20 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before  
21 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*  
22 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed  
23 until and unless Reed pays the \$405 filing fee or files an application to proceed *in forma*

1 *pauperis*, the only alternative is to enter a second order setting another deadline. But the reality  
2 of repeating an ignored order is that it often only delays the inevitable and squanders the court's  
3 finite resources. The circumstances here do not indicate that this case will be an exception:  
4 there is no hint that Reed needs additional time or evidence that he did not receive the court's  
5 order. Setting another deadline is not a meaningful alternative given these circumstances. So the  
6 fifth factor favors dismissal.

## 7 **II. Conclusion**

8 Having thoroughly considered these dismissal factors, I find that they weigh in favor of  
9 dismissal. I therefore ordered that this action is dismissed without prejudice based on Reed's  
10 failure to file a fully complete application to proceed *in forma pauperis* or pay the full \$405  
11 filing fee in compliance with the Magistrate Judge's July 15, 2024, order. The Clerk of Court is  
12 directed to enter judgment accordingly and close this case. No other documents may be filed in  
13 this now-closed case. If Reed wishes to pursue his claims, he must file a complaint in a new  
14 case.

15  
16 Dated: September 30, 2024



U.S. District Judge